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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number:
[2024] EWCA Crim 846

CASE NO: 2024 01126 A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 14 June 2024

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE HILLIARD

HIS HONOUR JUDGE CONRAD KC

REX

v

DAVID JOSEPH DAVIES

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MR GWB HAYES appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE HILLIARD:

1. On 6 February 2024, having pleaded guilty to one offence before the Swansea Magistrates' Court, the appellant (then aged 49) was committed for sentence to the Crown Court. On 27 February 2024, in the Crown Court at Swansea, he was sentenced to 16 months' imprisonment for breach of a restraining order, contrary to s.363(1) and (3) Sentencing Act 2020. He now appeals against sentence with the leave of the single judge.
2. On 4 February 2024 the appellant went to the home address of his mother. In doing so, he was in breach of a restraining order made at the Swansea Magistrates' Court on 15 August 2022.
3. At 10.30 am the appellant entered his mother's home through the unlocked front door. She asked him what he was doing and he said, "I can't do this anymore. I'm going back to prison." She asked him to leave several times, but he refused. Then he said he would leave if she made him a cup of tea. She said that once he left, she would call the police. He stayed for 45 minutes. She then called the police. He contacted her again in the evening to say that he was in a street in Swansea. She contacted the police and told them where the appellant was. He was arrested. He declined to answer any questions when interviewed and his mother declined to make a victim personal statement.
4. The appellant had been convicted of 228 offences between 1988 and 2023. The offences include offences of dishonesty, assault, using threatening behaviour, possessing drugs and bladed articles. Many of the offences were committed whilst on bail. In addition, there were 27 Bail Act offences.
 - In 2011 he was sentenced to 14 days' imprisonment for breach of a civil injunction.
 - In 2015 to 12 months' imprisonment for breach of a non-molestation order; to 18 months' imprisonment for breach of a restraining order; and to 20 months' imprisonment for a like offence, all committed on separate occasions.
 - In 2016 to 6 weeks' imprisonment for breach of a restraining order; and to 16 weeks' and 12 weeks' imprisonment for like offences on separate occasions.

- In 2021 to 12 weeks' imprisonment for breach of a restraining order; and to 6 months' imprisonment for a like offence on another occasion.
 - In 2022 to 16 weeks' imprisonment for harassment. Thereafter, he breached the restraining order made in 2022.
 - In April 2023 he was sentenced to 16 weeks' imprisonment for breaching the restraining order; to 24 weeks' imprisonment for a like offence later in 2023; and to a further 24 weeks' imprisonment in October 2023.
5. When he passed sentence, the judge did not have a pre-sentence report. None was necessary, then or now. The judge referred to the appellant's substance misuse issues. He said that the offence fell within category 2A of the applicable sentencing guidelines because the offence represented a persistent breach of the restraining order. Such an offence has a starting point of 12 months' imprisonment, and a range extending up to 2 years' imprisonment. The judge said that this offence fell at the top of the category range due to the appellant's history. The judge said that it was the worst catalogue of breach offences that he could remember seeing. That accords with the combined experience of this court. The judge acknowledged that there was no specific evidence of distress, although it was the fourth breach of the order within a short period of time and perhaps the degree of distress could be inferred. In any event, the judge said the appellant could not be deterred and the only way to stop him breaching the order was to keep him in custody for as long as the guidelines permitted. The judge reduced the 2-year figure by one-third to take account of the plea of guilty.
6. The judge's categorisation of the offence is not now disputed. It was open to the judge to conclude that more than a little harm must have been caused on the occasion of the fourth breach of the order when the appellant came into his mother's home and stayed for 45 minutes, having refused on several occasions to leave. But it is argued by Mr Hayes that the sentence was manifestly excessive because the judge was wrong to infer that very significant distress might have been caused to the appellant's mother and that he attached

too much weight to the appellant's previous record.

7. We are grateful to Mr Hayes for his submissions. We have considered them with care. In the event, the judge did not rely upon the precise degree of distress which may or may not have been caused. He concluded that the appellant's previous record justified an increase to the top of the applicable sentencing range. It is always possible to conceive of a worse case, but in our judgment this course was reasonably open to him in all the circumstances of this case. The appellant's previous record was replete with breaches of court orders by committing offences whilst on bail, failing to surrender after being admitted to bail, and the other specific breaches of court orders which we have set out and which resulted in sentences of imprisonment. This offence represented another deliberate breach of a court order. It was also the fourth breach of this particular order. Although the precise consequences of the offence were a matter of speculation, the appellant had entered his mother's home, uninvited, and remained there for some time despite her requests that he leave. Culpability was very bad indeed. In all the circumstances here, the appellant's previous record and failure to respond to the previous sentences were, in our judgment, sufficient to justify an uplift from the starting point and to the top of the range before credit for the guilty plea. In those circumstances, this appeal must be dismissed.

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